

REMARKS

This is in response to the Office Action mailed on January 4, 2005, and the references cited therewith.

Claims 1 and 2 are amended, no claims are canceled, and claims 3-13 are added; as a result, claims 1-13 are now pending in this application. Claims 1 and 2 have been amended in order to provide a basis for distinguishing the domain produced by the failover script from input domains used in later claims. Thus the amendment is not in response to an art-based rejection or other patentability issue. Applicant believes the claims as amended are thus entitled to the same scope and range of equivalents as originally filed.

§102 Rejection of the Claims

Claims 1 and 2 were rejected under 35 USC § 102(e) as being anticipated by Alexander et al. (U.S. Patent No. 6,189,111 B1). Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon* 919 F.2d 688, 16 USPQ 2d 1897, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, “[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim*.” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added).

Applicant respectfully submits that the Office Action did not make out a *prima facie* case of anticipation for the following reasons because the claims contain elements not found in Alexander. For example, claims 1 and 2 recites a failover script that is executed to create a failover domain. The Office Action asserts that Alexander, at column 5, lines 40-50, column 6, lines 19-21, column 8, lines 40-42, and column 9, lines 32-33 discloses receiving a failover script to produce a failover domain. Applicant has reviewed the cited sections, and the reference as a whole and can find no teaching or disclosure of a component that receives and executes a script to produce a failover domain. Alexander recites a cluster manager and a master cluster manager that performs active or passive harvesting. Alexander does not provide any detail on how a

domain is selected, it appears that the failover domain consists of the non-failed nodes in a cluster maintained by cluster manager components. This is different from Applicant's claims in which a failover script is read and interpreted to determine a failover domain at runtime based on commands in the script. The use of a failover script provides more flexibility in determining a failover domain than merely assuming the failover domain consists of all non-failed nodes.

Additionally, claims 2 recites "based on the failover attribute and failover domain, selecting a node upon which to locate a resource." Alexander, at column 6, lines 18-37 states that a node may be selected in one of two ways, either using a "N+1" redundancy mechanism or a node on a "modulo-N basis in which a node j+1 becomes the recipient for the harvest of the (failed) node j." Neither of these two mechanisms use a failover attribute or a failover domain determined by a script to perform node selection.

In view of the above, Alexander fails to teach or disclose each and every limitation of Applicant's claims 1 and 2. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 1 and 2.

New Claims 3-13

New claims 3 – 13 have been added in this response. Support for new claims 3 – 13 may be found throughout the specification and in particular on pages 9-10 and pages 14-15.

Applicant respectfully submits that the claims are patentable for at least the reasons discussed above regarding their respective base claims 1 and 2.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6954 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

PADMANABHAN SREENIVASAN ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

P.O. Box 2938

Minneapolis, MN 55402

(612) 373-6954

Date July 5, 2005

By [Signature]

Rodney L. Lacy

Reg. No. 41,136

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 5th day of July, 2005.

Rodney L. Lacy

Name

[Signature]
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